

SECTION 15. OPERATING PERMIT MODIFICATIONS - REOPENING FOR CAUSE

- (A) Administrative permit amendments.
- (1) An "administrative permit amendment" is a permit revision that:
    - (a) Corrects typographical errors;
    - (b) Identifies a change in the name, address, or telephone number of any person identified in the permit, provided that the owner or operator of the source is not changed;
    - (c) Requires more frequent monitoring or reporting by the permittee; and
    - (d) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority.
  - (2) A permittee may request the Director to make an administrative permit amendment in writing by specifying the section of the permit that is to be changed and the reason for the change.
  - (3) The source may implement the changes addressed in the request immediately upon submittal of the request, subject to the Department's final action on the request under subparagraph (A) (4) below.
  - (4) The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public, EPA, or Affected States.
  - (5) For Class I permits only, the Department shall submit a copy of the revised permit to the Administrator of EPA.
  - (6) If the Department determines that the permittee's request for an administrative permit amendment should be handled as a minor modification or other permit modification, the Department shall notify the permittee of this determination and proceed with such modification pursuant to the applicable procedures.
  - (7) The permit shield described in Section 8, paragraph (N) of these Regulations and Standards shall not apply to administrative permit amendments.
- (B) Permit modifications to the acid rain portion of a Class I permit shall be governed by Section 26 of these Regulations and Standards.
- (C) Minor Permit Modifications.
- (1) The minor permit modification procedures of this section may be used only for those permit modifications that:
    - (a) Do not violate any applicable requirement or applicable requirement under the Act.
    - (b) Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
    - (c) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or inclement analysis;
    - (d) Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement or applicable requirements under the Act to which the source would otherwise be subject. Such terms and conditions include:
      - (1) A federally enforceable emissions cap assumed to avoid classification as a modification which require a construction permit under Section 17; and
      - (2) An alternative emissions limit approved pursuant to Sections 27 or 28 of these Regulations and Standards;
  - (e) Are not modifications which:
    - (1) Require a construction permit under Section 17,
    - (2) Are defined as a modification under the General Provisions for the standards of performance for new stationary sources incorporated by references in Section 18; and
    - (3) Are defined as a modification subject to preconstruction review under Section 19.
    - (4) Are defined as a modification under the National Emissions Standard for Hazardous Air Pollutants incorporated by reference in Section 23.

- (f) Are not required by the Director to be processed as a significant modification; and
  - (g) Involve the use of economic incentives, marketable permits, emissions trading, and other similar programs or procedures; provided that such minor permit modification procedures are explicitly allowed for in a applicable State Implementation Plan or in an applicable requirement or applicable requirement under the Act.
- (2) A permittee may request a minor permit modification by filing the standard form for either a Class I or a Class II operating permit, as appropriate, and shall include the following:
- (a) A description of the change, the emissions resulting from the change, and any new applicable requirements and or applicable requirements under the Act that will apply if the change occurs;
  - (b) The source's suggested draft permit language;
  - (c) Certification by the responsible official, in accordance with Section 7, paragraph (H) of these Regulations and Standards that the proposed modification meets the criteria in subparagraph (C) (1) above for use of minor modification procedures and a request that such procedures be used;
  - (d) For a Class I minor permit modification only, two extra copies of completed forms identified in subparagraph (C) (2) (a) through (C) (2) (c) above for the Department to use to notify the Administrator and Affected States.
- (3) For Class I operating permit modifications only, within 5 working days of receipt of a complete permit modification application, the Department shall notify the Administrator and Affected States of the requested permit modification.
- (a) Affected States shall have 30 days to review and provide comments on the requested permit modification. The Department shall provide notice to the Administrator and any Affected State in writing of any refusal by the Department to accept all recommendations that the Affected State has submitted.
  - (b) EPA shall have 45 days to review and comment on the requested permit modification. The Department shall not issue a final permit modification until after EPA's 45 day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first.
- (4) Within 90 days of the Department's receipt of an application under the minor permit modification procedures or 15 days after the end of EPA's 45 day review period, whichever is later, the Department shall:
- (a) Issue the permit modification as proposed;
  - (b) Deny the permit modification application;
  - (c) Determine that the requested modification does not meet the minor permit modification criteria in subparagraph (C) (1) above and should be reviewed under the significant modification procedures; or
  - (d) Revise the draft permit modification and for Class I modifications only, transmit the new proposed permit to EPA for review as required in subparagraph (C) (3) (b) above.
- (5) A source submitting a minor permit modification request may make the change proposed immediately after it files the application unless notified by the Department that the request does not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under subparagraph (C) (4) (a) through (C) (4) (c) above, the source must comply with both the applicable requirements governing the change, applicable requirements under the Act, and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall be cause for denial of the minor permit modification request.
- (6) The permit shield described in section 8, paragraph (L) of these Regulations and Standards, shall not apply to a minor permit modification.

- (D) Group processing of minor permit modifications.
- (1) The Director, at his or her discretion, may modify the minor permit modification procedures in paragraph (C) above to process groups of a source's applications for certain modifications eligible for minor permit modification procedures.
  - (2) Group processing of modifications may only be used for those permits modifications:
    - (a) That meet the criteria for minor permit modification procedures under paragraph (C) above; and
    - (b) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source for purpose of Class I permitting, or 5 tons per year, whichever is less.
  - (3) A permittee may request the use of group processing procedures in this section by filing the standard application form for a Class I or Class II operating permit, as appropriate, and shall include the following:
    - (a) A description of the change, the emissions resulting from the change, any applicable requirements or applicable requirements under the Act that will apply if the change occurs;
    - (b) The source's requested draft permit language;
    - (c) Certification by a responsible official, in accordance with Section 7, paragraph (H) of these Regulations and Standards, that the proposed modification meets the criteria for use of groups processing procedures and a request that such procedures be used;
    - (d) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subparagraph (D) (2) (b) above;
    - (e) For Class I modifications only, two extra copies of completed forms for the Department to use to notify the Administrator and Affected States.
      - (1) Within 5 working days of receipt of an application for the group processing of a source's minor permit modification requests, the Department shall notify the Administrator and Affected States of the request for group processing.
      - (2) Affected States shall have 30 days to review and comment on the request. The Department shall notify EPA and any Affected State in writing of any refusal by the Department to accept all recommendations for the proposed permit modification that the Affected State has submitted.
      - (3) EPA shall have 45 days to review and comment on request for group processing of minor permit modifications. The Department shall not issue a final permit modification until after EPA's 45 day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first.
      - (4) Within 180 days of receipt of the application for group processing of minor permit modifications or 15 days after the end of the EPA's 45 day review period, the Director shall:
        - (a) Issue the permit modification as proposed;
        - (b) Deny the permit modification application;
        - (c) Determine that the requested modification does not meet the criteria for group processing in subparagraph (D) (2) of this section and should be reviewed under the significant modification procedures; or
        - (d) Revise the draft permit modification and, for Class I permit modifications only, transmit to the Administrator the new proposed permit modification as required by subparagraph (D) (3) (e) (3) above.

- (5) A source submitting a request for a group processing of minor permit modifications may make the change proposed immediately after it files the application unless notices by the Department that the request did not qualify as a minor permit modification. After the source makes the change, and until the Department takes action under subparagraph )D) (4) (a) through (D) (4) (c) above, the source must comply with applicable requirements governing the change, applicable requirements under the Act and the proposed permit terms and conditions. If the source fails to comply with its proposed permit terms and conditions during this interim period, the existing permit terms and conditions the source seeks to modify may be enforced and such failure to comply shall cause for denial of the minor permit modification request.
  - (6) The permit shield described in Section 8, paragraph (N) shall not apply to group-processed minor permit modifications.
- (E) Significant modifications.
  - (1) A “significant modification” is any revision or change to a permit that cannot be accomplished as an administrative permit amendment or as a minor permit modification. Any relaxation in existing monitoring, reporting, or record keeping shall be considered significant.
  - (2) A permittee may request a significant modification by complying with the application procedures for permit issuance in Section 7, paragraph (F) of these Regulations and Standards.
  - (3) The Department shall review an application for a significant modification following the applicable procedures for permit issuance, including public participation, EPA and Affected States review.
  - (4) The permit shield described in Section 8, paragraph (L) of these Regulations and Standards, shall apply to a significant modification only after the Director approves the modification, provided that the permit contains a permit shield.
- (F) Reopening for cause; revocation and reissuance; and termination.
  - (1) Any Class I or Class II operating permit issued by the Director shall be reopened, revoked and reissued or terminated, during its term for cause, including but not limited to:
    - (a) Additional applicable requirements under the Act or these Regulations and Standards become applicable to a Class I or Class II permitting source with a remaining permit term of 3 or more years. Such reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any if its terms and conditions had been extended.
    - (b) Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program under Title IV of the Act.
    - (c) The Director, or Administrator for a Class I permit only, determines that the permit must be revoked and reissued to assure compliance with the applicable requirements.
    - (d) The Director, or the Administrator for a Class I permit only, determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms and conditions of the permit.
    - (e) The Director, or the Administrator for a Class I permit only, determines that an applicable requirement or applicable requirement under the Act applies which was not identified by the permittee in its application.
  - (2) A Class I or Class II operating permit may be revoked during its term for cause, including but not limited to:
    - (a) The existence at the facility of unresolved noncompliance with applicable requirements or a term or condition of the permit, and refusal of the permittee to agree to an enforceable schedule of compliance to resolve the noncompliance;
    - (b) The permittee has falsely certified or submitted false, incomplete, or misleading information to the Department or EPA;
    - (c) The Director determines that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the permit; or

- (d) The permittee has failed to pay a penalty owed pursuant to court order, stipulation and agreement, or order issued by the Administrator.
  - (3) The Department shall initiate a reopening or revocation under paragraph (F) (1) or (F) (2) above by providing a notice of intent to the permittee and publishing notice of such intent following the procedures applicable to permit issuance including public participation, and EPA and Affected State review for Class I permits only. Proceedings to reopen a permit shall affect only those parts of the permit for which cause to reopen exists. The Department shall provide a minimum 30 day public comment period unless the Director determines that an emergency exists which necessitates a shorter time period.
  - (4) If the Department receives a notification from the Administrator that a Class I operating permit should be reopened for cause pursuant to this section, the Department shall, within 90 days for receipt of such notification, or revocation and reissuance, as appropriate.
  - (5) If the Administrator does not object to the Department's determination under subparagraph (F) (4) above within 90 days, the Department shall proceed as indicated.
  - (6) If the Administrator objects to the Department's determination under subparagraph (F) (4) above within 90 days, the Department shall have an additional 90 days from receipt of EPA's objection during which the Department may take action to terminate, modify, or revoke and reissue the permit in accordance with the EPA's objection.
  - (7) If the Department fails to take action as stated in any EPA objection under subparagraph (F) (6) of this section, the permit may be subject to action by the Administrator.
- (G) For Class I permits only, a permittee may make the following changes within a permitted facility without a permit revision, if the change is not a modification which would require a construction permit under Section 17, Section 18, Section 19, Section 23, Section 27, and Section 28 of these Regulations and Standards, and the change does not result in the emissions allowable under the permit being exceeded, provided that the permittee provides the Director with written notification as required below a minimum of 30 days in advance of the proposed changes, unless the Director determines a shorter time is necessary for emergency reasons. The permittee shall attach a copy of the notice to its copy of the Class I operating permit. The permit shield described in Section 8 paragraph (N) shall not apply to any change made under this section.
- (1) Section 502 (b) (10) changes, as defined in Section 1, provided that the written notification required above shall include:
    - (a) A brief description of the change within the permitted facility;
    - (b) The date on which the change will occur;
    - (c) Any changes in emissions; and
    - (d) Any permit term or condition that is no longer applicable as a result of the change.
  - (2) Trading of increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision; provided that the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum:
    - (a) The date the proposed change will occur;
    - (b) A description of each such change;
    - (c) Any change of emissions;
    - (d) The regulatory provisions and permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan; and
    - (e) The pollutants emitted subject to the emissions trade.
  - (3) Trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that has been established pursuant to Section 8, paragraph (S); provided, that the written notification required above shall include:
    - (a) The date the change will occur,
    - (b) A description of the changes in emission that will result, and
    - (c) How these increases and decreases in emissions will comply with the terms and conditions of the permit.

- (H) No permit revisions shall be required under any State-approved programs providing for economic incentives, marketable permits, emissions trading or other similar programs or processed for changes that are provided for in the permit.

Ref: Title 129, Chapter 15, Nebraska Department of Environmental Quality